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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

CUSTODIA BANK, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Number: 22-cv-00125-SWS
)	
FEDERAL RESERVE BOARD OF)	
GOVERNORS and FEDERAL RESERVE)	
BANK OF KANSAS CITY,)	
)	
Defendants.)	

**DECLARATION OF RYAN SCARBOROUGH IN SUPPORT OF PLAINTIFF CUSTODIA BANK, INC.'S
OMNIBUS BRIEF IN SUPPORT OF ITS PETITION FOR REVIEW ON ITS APA CLAIM AND MOTION
FOR JUDGMENT AS A MATTER OF LAW ON ITS STATUTORY MANDAMUS CLAIM**

I, Ryan Scarborough, declare as follows:

1. I am an attorney at Williams & Connolly LLP, counsel for the Plaintiff in the above-captioned action.
2. I respectfully submit this declaration in support of Plaintiff Custodia Bank, Inc.'s Omnibus Brief in Support of its Petition for Review on its APA Claim and its Motion for Judgment as a Matter of Law on its Statutory Mandamus Claim.
3. Attached hereto as Exhibit A is a true and accurate copy of Peter Conti-Brown's Expert Report, dated October 20, 2023.

4. Attached hereto as Exhibit B is a true and accurate copy of an email from Seth Ruhter with the subject line “Re: WSJ Op-Ed- updated,” dated December 2, 2021, bearing a bates number that begins at FRBKC-00015088.

5. Attached hereto as Exhibit C is a true and accurate copy of excerpts from the Federal Reserve Bank of Kansas City’s 30(b)(6) deposition, dated November 16, 2023.

6. Attached hereto as Exhibit D is a true and accurate copy of an email from Esther George with the subject line “RE: Wyoming SPDI Conversations,” dated August 6, 2020, bearing a bates number that begins at FRBKC-00000276.

7. Attached hereto as Exhibit E is a true and accurate copy of excerpts from the deposition of Tara Humston, dated November 3, 2023.

8. Attached hereto as Exhibit F is a true and accurate copy of the State of Wyoming House Bill Working Draft regarding Special Purpose Depository Institutions legislation, dated 2019.

9. Attached hereto as Exhibit G is a true and accurate copy of a document entitled “Wyoming Cryptocurrency Bill Talking Points,” dated December 3, 2018, bearing a bates number that begins at FRBKC-00018341.

10. Attached hereto as Exhibit H is a true and accurate copy of an email from Nick Billman with the subject line “RE: Wyoming Talking Points,” dated December 12, 2018, bearing a bates number that begins at FRBKC-00018339.

11. Attached hereto as Exhibit I is a true and accurate copy of a letter from The Federal Reserve Bank of Kansas City to Chuck Thompson, dated January 27, 2022, bearing a bates number that begins at FRBKC-00000234.

12. Attached hereto as Exhibit J is a true and accurate copy of excerpts from the deposition of Esther George, dated November 9, 2023.

13. Attached hereto as Exhibit K is a true and accurate copy of excerpts from the deposition of Jackie Nugent, dated November 15, 2023.

14. Attached hereto as Exhibit L is a true and accurate copy of a letter from the Office of the Comptroller of the Currency with the subject line “Re: Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers,” dated July 22, 2020.

15. Attached hereto as Exhibit M is a true and accurate copy of a Short Message Report, dated December 9, 2022, bearing a bates number that begins at FRBKC-00004962.

16. Attached hereto as Exhibit N is a true and accurate copy of excerpts from the deposition of Judith Hazen, dated October 17, 2023.

17. Attached hereto as Exhibit O is a true and accurate copy of an email from Caitlin Long with the subject line “Re: Interesting data points for you,” dated January 29, 2021, bearing a bates number that begins at Custodia-00002096.

18. Attached hereto as Exhibit P is a true and accurate copy of excerpts from the transcript of the nomination hearing of Chair of the Federal Reserve Board of Governors Jerome Powell, dated January 11, 2022.

19. Attached hereto as Exhibit Q is a true and accurate copy of an internal document from Esther George with the subject line “Phone call with President George/Gov. Brainard to discuss a new proposal from TCH,” dated March 12, 2021, bearing a bates number that begins at FRBKC-00017834.

20. Attached hereto as Exhibit R is a true and accurate copy of a document entitled “Custodia (f/k/a Avanti) Meeting,” dated March 24, 2022, bearing a bates number that begins at FRBKC-00009848.

21. Attached hereto as Exhibit S is a true and accurate copy of an email from Porcia Block with the subject line “FW: Draft Agenda for Introductory Calls,” dated November 5, 2020, bearing a bates number that begins at FRBKC-00003426.

22. Attached hereto as Exhibit T is a true and accurate copy of a letter from The Federal Reserve Bank of Kansas City to Caitlin Long, dated August 2, 2021, bearing a bates number that begins at FRB-AR-003858.

23. Attached hereto as Exhibit U is a true and accurate copy of an email from Esther George with the subject line “Re: Meeting request from Avanti,” dated December 2, 2020, bearing a bates number that begins at FRBKC-00010562.

24. Attached hereto as Exhibit V is a true and accurate copy of an email from Lacey Peters with the subject line “RE: SPDI Custodia and Fiduciary Manual,” dated December 3, 2020, bearing a bates number that begins at FRBKC-00002560.

25. Attached hereto as Exhibit W is a true and accurate copy of privileged and redacted handwritten notes entitled “Tara's Book,” dated June 17, 2021, through August 5, 2021, bearing a bates number that begins at FRBKC-00014054.

26. Attached hereto as Exhibit X is a true and accurate copy of an email from Kathy Wilson with the subject line “RE: Resources to contribute from Kansas City,” dated November 16, 2020, bearing a bates number that begins at FRBKC-00004899.

27. Attached hereto as Exhibit Y is a true and accurate copy of a document entitled “Board/FRS: Nontraditional Account Access Workstream Structure,” bearing a bates number that begins at FRBKC-00004902.

28. Attached hereto as Exhibit Z is a true and accurate copy of Katie S. Cox’s Expert Report, submitted October 20, 2023.

29. Attached hereto as Exhibit AA is a true and accurate copy of a Short Message Report, dated March 14, 2022, bearing a bates number that begins at FRBKC-00004943.

30. Attached hereto as Exhibit AB is a true and accurate copy of redacted handwritten notes, dated October 2, 2020, bearing a bates number that begins at FRBKC-00013890.

31. Attached hereto as Exhibit AC is a true and accurate copy of redacted handwritten notes entitled “Tara’s Book,” dated November 8, 2021, through December 12, 2021, bearing a bates number that begins at FRBKC-00013969.

32. Attached hereto as Exhibit AD is a true and accurate copy of an email from Tara Humston with the subject line “RE: Avanti @ Money 2020,” dated November 4, 2021, bearing a bates number that begins at FRBKC-00000394.

33. Attached hereto as Exhibit AE is a true and accurate copy of excerpts from the deposition of Caitlin Long, dated November 29, 2023.

34. Attached hereto as Exhibit AF is a true and accurate copy of an email from Caitlin Long with the subject line “update,” dated, August 6, 2021, bearing a bates number that begins at Custodia-00004366.

35. Attached hereto as Exhibit AG is a true and accurate copy of a letter from The Federal Reserve Bank of Kansas City to Caitlin Long, dated October 21, 2022, bearing a bates number that begins at FRBKC-00000297.

36. Attached hereto as Exhibit AH is a true and accurate copy of excerpts from the deposition of Christi May-Oder, dated October 19, 2023.

37. Attached hereto as Exhibit AI is a true and accurate copy of excerpts from the deposition of Andrea Mullins, dated December 7, 2023.

38. Attached hereto as Exhibit AJ is a true and accurate copy of excerpts from the deposition of Ross Crouch, dated October 25, 2023.

39. Attached hereto as Exhibit AK is a true and accurate copy of a letter from The Federal Reserve Bank of Kansas City to Caitlin Long, dated August 19, 2022, bearing a bates number that begins at Custodia-00009860.

40. Attached hereto as Exhibit AL is a true and accurate copy of an email from Judith Hazen with the subject line "RE: Custodia Memo to Esther," dated December 6, 2022, bearing a bates number that begins at FRBKC-00002132.

41. Attached hereto as Exhibit AM is a true and accurate copy of an email from Jeff Imgarten with the subject line "RE: Custodia Review Documents," dated June 25, 2022, bearing a bates number that begins at FRBKC-00002200.

42. Attached hereto as Exhibit AN is a true and accurate copy of a redacted email from Jeff Imgarten with the subject line "RE: Notes from 1/26 Meeting with the Board," dated February 28, 2022, bearing a bates number that begins at FRBKC-00003428.

43. Attached hereto as Exhibit AO is a true and accurate copy of an email from Katie Cox with the subject line "Re: definition of 'complex bank,'" dated October 22, 2022, bearing a bates number that begins at Custodia-00003104.

44. Attached hereto as Exhibit AP is a true and accurate copy of a letter from The Federal Reserve Bank of Kansas City to Caitlin Long, dated October 21, 2022, bearing a bates number that begins at FRBKC-00014758.

45. Attached hereto as Exhibit AQ is a true and accurate copy of a document titled, “Custodia Feedback Meeting Comments” summarizing feedback to be delivered to Custodia regarding its September 6, 2022, pre-membership examination.

46. Attached hereto as Exhibit AR is a true and accurate copy of an email from Caitlin Long with the subject line “Custodia,” dated December 21, 2022, bearing a bates number that begins at Custodia-00007002.

47. Attached hereto as Exhibit AS is a true and accurate copy of an S-2677 letter from the Board of Governors of the Federal Reserve System to the President and First Vice President of each Federal Reserve Bank, dated January 17, 2023, bearing a bates number that begins at FRB-AR-000014.

48. Attached hereto as Exhibit AT is a true and accurate copy of a Short Message Report, dated February 9, 2022, bearing a bates number that begins at FRBKC-00011220.

49. Attached hereto as Exhibit AU is a true and accurate copy of Katie S. Cox’s Supplemental Expert Report, dated December 4, 2023.

50. Attached hereto as Exhibit AV is a true and accurate copy of a document entitled “DRAFT4 V3 Account Access Guidelines - FRS Internal Implementation Handbook,” dated September 22, 2022, bearing a bates number that begins at FRBKC-00017974.

51. Attached hereto as Exhibit AW is a true and accurate copy of a document entitled “DRAFT4 V4 Account Access Guidelines - FRS Internal Implementation Handbook,” dated October 21, 2022, bearing a bates number that begins at FRBKC-00018073.

52. Attached hereto as Exhibit AX is a true and accurate copy of a document entitled “Account Access Guidelines - FRS Internal Implementation Handbook,” dated August 16, 2023, bearing a bates number that begins at FRBKC-00017290.

53. Attached hereto as Exhibit AY is a true and accurate copy of Peter Conti-Brown’s Supplemental Expert Report, dated December 11, 2023.

54. Attached hereto as Exhibit AZ is a true and accurate copy of a document entitled “Novel Account Access Review,” bearing a bates number that begins at FRBKC-00017570.

55. Attached hereto as Exhibit BA is a true and accurate copy of Tab 10, which contains a list of individuals from the Board who had contact with individuals from the Federal Reserve Bank of Kansas City about Custodia’s master account, excerpted from the binder used by Judith Hazen to prepare as the Federal Reserve Bank of Kansas City’s 30(b)(6) deposition witness.

56. Attached hereto as Exhibit BB is a true and accurate copy of a list of individuals who were involved in working with non-traditional accounts, like Special Purpose Depository Institutions, while working at the Federal Reserve Board of Governors, created during the Federal Reserve Bank of Kansas City’s 30(b)(6) deposition.

57. Attached hereto as Exhibit BC is a true and accurate copy of an email from Chris Gaul-Pearson with the subject line “RE: ABA Routing Number,” dated January 27, 2022, bearing a bates number that begins at FRBKC-00000446.

58. Attached hereto as Exhibit BD is a true and accurate copy of an email from Jackie Nugent with the subject line “RE: Master account requests - next steps for us to work on,” dated November 24, 2020, bearing a bates number that begins at FRBKC-00015474.

59. Attached hereto as Exhibit BE is a true and accurate copy of an email from Esther George with the subject line “RE: SPDI charter/master account,” dated January 6, 2021, bearing a bates number that begins at FRBKC-00004808.

60. Attached hereto as Exhibit BF is a true and accurate copy of an email from Judith Hazen with the subject line “RE: Copy of Custodia Briefing Memo,” dated November 22, 2022, bearing a bates number that begins at FRBKC-00002169.

61. Attached hereto as Exhibit BG is a true and accurate copy of an email from Christi May-Oder with the subject line “Monetary Policy/Financial Stability Discussion,” dated September 27, 2022, bearing a bates number that begins at FRBKC-00000460.

62. Attached hereto as Exhibit BH is a true and accurate copy of a Short Message Report, dated July 25, 2022, bearing a bates number that begins at FRBKC-00005021.

63. Attached hereto as Exhibit BI is a true and accurate copy of an article by Brian Deese, et al entitled “The Administration’s Roadmap to Mitigate Cryptocurrencies’ Risks,” dated January 27, 2023.

64. Attached hereto as Exhibit BJ is a true and accurate copy of an email from Jackie Nugent with the subject line “FW: #Aware - FW: WSJ News Alert: [Redacted] Race to Cover \$8.1 Billion in Withdrawals During Crypto Meltdown,” dated January 5, 2023, bearing a bates number that begins at FRBKC-00015275.

65. Attached hereto as Exhibit BK is a true and accurate copy of an email from Tara Humston with the subject line “FW: Correspondence from Custodia Regarding FTX Exchange and Related Policy Implications,” dated November 23, 2022, bearing a bates number that begins at FRBKC-00014994.

66. Attached hereto as Exhibit BL is a true and accurate copy of an email from Jeff Imgarten with the subject line “Initial Draft of Commitments/Conditions for Custodia Bank-Supplemental Information,” dated November 14, 2022, bearing a bates number that begins at FRBKC-00010129.

67. Attached hereto as Exhibit BM is a true and accurate copy of a document entitled “Potential Membership Application Commitments Summary,” bearing a bates number that begins at FRBKC-00010131.

68. Attached hereto as Exhibit BN is a true and accurate copy of excerpts from the rough transcript of the deposition of Peter Conti-Brown, dated December 14, 2023.

69. Attached hereto as Exhibit BO is a true and accurate copy of an email from Jeff Imgarten with the subject line “RE: Copy of Custodia Briefing Memo?,” dated November 27, 2022, bearing a bates number that begins at FRBKC-00016494.

70. Attached hereto as Exhibit BP is a true and accurate copy of a Short Message Report, dated November 30, 2022, bearing a bates number that begins at FRBKC-00015783.

71. Attached hereto as Exhibit BQ is a true and accurate copy of an email from Jason Hinkle with the subject line “RE: Draft Recommendation Memo,” dated January 9, 2023, bearing a bates number that begins at FRB-AR-000324.

72. Attached hereto as Exhibit BR is a true and accurate copy of an email from Nick Billman with the subject line “Re: #Aware - Feedback on FRBKC Custodia analysis on Monetary policy & FS risk,” dated January 3, 2023, bearing a bates number that begins at FRBKC-00011698.

73. Attached hereto as Exhibit BS is a true and accurate copy of a draft Executive Summary to Esther George with the subject line “Custodia Bank, Inc. (fka Avanti Bank & Trust)

Master Accounts Recommendation,” dated January XX, 2023, bearing a bates number that begins at FRB-AR-000326.

74. Attached hereto as Exhibit BT is a true and accurate copy of an internal memo from the Federal Reserve Bank of Kansas City with the subject line “Update on Avanti Bank & Trust, Cheyenne, WY (Avanti) - Information may support internal staff with ongoing master account access request and Federal Reserve membership application analyses,” dated January 13, 2022, bearing a bates number that begins at FRBKC-00010204.

75. Attached hereto as Exhibit BU is a true and accurate copy of a document entitled “SPDI Conclusion Memo,” dated July 15, 2020, bearing a bates number that begins at FRBKC-00009384.

76. Attached hereto as Exhibit BV is a true and accurate copy of a communication from Rob Triano with the subject line “RE: Initial/Pre-scope Review of Internal Audit,” dated October 22, 2021, bearing a bates number that begins at FRBKC-00000054.

77. Attached hereto as Exhibit BW is a true and accurate copy of a Short Message Report, dated January 26, 2022, bearing a bates number that begins at FRBKC-00004977.

78. Attached hereto as Exhibit BX is a true and accurate copy of a document entitled “Application Review - Avanti,” dated July 15, 2020, bearing a bates number that begins at FRBKC-00009571.

79. Attached hereto as Exhibit BY is a true and accurate copy of an email from Matthew Malloy with the subject line “RE: Draft Recommendation Memo,” dated January 10, 2023, bearing a bates number that begins at FRB-AR-000313.

80. Attached hereto as Exhibit BZ is a true and accurate copy of a draft Executive Summary to Esther George with the subject line “Custodia Bank, Inc. (fka Avanti Bank & Trust)

Master Accounts Recommendation,” dated January XX, 2023, bearing a bates number that begins at FRB-AR-000315.

81. Attached hereto as Exhibit CA is a true and accurate copy of an email from Judith Hazen with the subject line “Custodia Recommendation,” dated January 19, 2023, bearing a bates number that begins at FRBKC-00010951.

82. Attached hereto as Exhibit CB is a true and accurate copy of an email from Judith Hazen with the subject line “Custodia Bank Master Account Request,” dated January 24, 2023, bearing a bates number that begins at FRB-AR-000003.

83. Attached hereto as Exhibit CC is a true and accurate copy of an email from Matthew Eichner with the subject line “Custodia response: S-Letter - 2667 with no concerns identified,” dated January 26, 2023, bearing a bates number that begins at FRB-AR-000002.

84. Attached hereto as Exhibit CD is a true and accurate copy of a letter from Caitlin Long to the Office of the Inspector General of the Federal Reserve Board of Governors, dated March 8, 2023, bearing a bates number that begins at Custodia-00010268.

85. Attached hereto as Exhibit CE is a true and accurate copy of an email from Amy LaFave with the subject line “Correspondence from Federal Reserve Bank of Kansas City President Esther George,” dated January 27, 2023, bearing a bates number that begins at FRBKC-00002171.

86. Attached hereto as Exhibit CF is a true and accurate copy of a letter from The Federal Reserve Bank of Kansas City to Caitlin Long, dated January 27, 2022, bearing a bates number that begins at FRBKC-00002172.

87. Attached hereto as Exhibit CG is a true and accurate copy of an email from Christi May-Oder with the subject line “Re: #Aware - Feedback on FRBKC Custodia analysis on

Monetary policy & FS risk,” dated December 23, 2022, bearing a bates number that begins at FRBKC-00013622.

88. Attached hereto as Exhibit CH is a true and accurate copy of an email from Press@Custodia with the subject line “Re: Bloomberg News Inquiry,” dated January 26, 2023, bearing a bates number that begins at Custodia-00010032.

89. Attached hereto as Exhibit CI is a true and accurate copy of a letter from the State of Wyoming Department of Audit to Caitlin Long, dated September 12, 2022, bearing a bates number that begins at Custodia-00004962.

90. Attached hereto as Exhibit CJ is a true and accurate copy of a report of the House Subcommittee on Domestic Monetary Policy of the Committee on Banking, Finance and Urban Affairs entitled, “The Role and Activities of the Federal Reserve System in the Nation’s Check Clearing and Payments System, Report of the Subcommittee on Domestic Monetary Policy (98th Cong., Second Session),” dated November 1984.

91. Attached hereto as Exhibit CK is a true and accurate copy of a Notice from the Board of Governors of the Federal Reserve System, dated August 20, 1981.

92. Attached hereto as Exhibit CL is a true and accurate copy of the Federal Reserve Bank of Kansas City 1981 Annual Report, dated January 1981.

93. Attached hereto as Exhibit CM is a true and accurate copy of Morgan Ricks’ Expert Report, dated December 4, 2023.

94. Attached hereto as Exhibit CN is a true and accurate copy of a letter from The Federal Reserve Bank of New York to Thomas Dewey, dated May 16, 2018, bearing a bates number that begins at TNB-0000002.

95. Attached hereto as Exhibit CO is a true and accurate copy of an email from Caitlin Long with the subject line “baby steps,” dated January 27, 2022, bearing a bates number that begins at Custodia-00008131.

96. Attached hereto as Exhibit CP is a true and accurate copy of an email from Judith Hazen with the subject line “Re: Custodia Memo to Esther,” dated December 6, 2022, bearing a bates number that begins at FRBKC-00002132.

97. Attached hereto as Exhibit CQ is a true and accurate copy of an email from Caitlin Long with the subject line “Re: Custodia does not withdraw its membership application; willing to resubmit it if that is necessary for Fed to finally review updated record,” dated January 27, 2023, bearing a bates number that begins at Custodia-00009974.

DATED this 20th day of December, 2023.

/s/ Ryan Scarborough

Ryan Scarborough, *pro hac vice*

WILLIAMS & CONNOLLY, LLP

680 Maine Avenue SW

Washington, DC 20024

Telephone: (202) 434-5000

rscarborough@wc.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served this day of December 20, 2023, addressed to:

Mark Van Der Weide
 Richard M. Ashton
 Joshua P. Chadwick
 Yvonne F. Mizusawa
 Yonatan Gelblum
 Katherine Pomeroy
 BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
 20th Street and Constitutional Avenue, N.W.
 Washington, DC 20551

- ☐ U.S. Mail (Postage Prepaid)
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☐ Overnight Delivery
☐ Hand Delivery
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/s/ Ryan Scarborough
 Ryan Scarborough